

Exhibit 1
To the Zakarin Reply Declaration
in further support of
Extreme's motion for Summary Judgment

Redacted
(UnRedacted Copy is Filed Under Seal)

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

TWELVE SIXTY LLC, ARON
MARDEROSIAN and ROBERT
MARDEROSIAN,

Plaintiffs,

-against-

Civil Action No.:

EXTREME MUSIC LIBRARY LIMITED,
a division of Sony/ATV Music
Publishing; EXTREME MUSIC
LIMITED; VIACOM INTERNATIONAL
INC., NEW CREATIVE MIX INC.,
HYPE PRODUCTION MUSIC.

Defendants.

November 1, 2018

1:00 p.m.

Deposition of ROBERT H. KOHN, taken by Defendants, pursuant to Notice, held at the law offices of Pryor Cashman, LLP, 7 Times Square, New York, New York, before Judith Castore, a Certified Livenote Reporter and Notary Public of the State of New York.

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2 A P P E A R A N C E S

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ON BEHALF OF PLAINTIFFS

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ON BEHALF OF DEFENDANTS - Viacom International,
Inc., New Creative Mix, Inc. and Hype
Production Music

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1 KOHN

2 commercial and the Starbucks commercial
3 in there. I might have found it. I
4 might have listened to it, but I don't
5 remember.

6 But I poked around it to see
7 what was there but I did not do what
8 you had asked me. And I did not do a
9 calculations as to how much were this
10 kind and how much were that kind.

11 Q Turn to Exhibit B of your
12 report, if you would.

16 I think when we broke, I had
17 asked you to look at your Exhibit B --

18 A Yes.

19 Q -- to your report. Do you
20 recall? Pull it out.

21 A Okay. Exhibit B.

22 Q And you say these are unique
23 TuneSat detections?

24 A That's what the title of it
25 is.

1 KOHN

2 Q Are they unique?

3 A Yes. That's my understanding
4 of what they are. I didn't produce
5 these.

6 Q You didn't --

7 A No.

8 Q -- create this document?

9 A No.

10 Q So somebody else created it,
11 and told you what it was?

12 A Well, I was given it by
13 attorneys; and I understand that Karen
14 Rodriguez had prepared it.

15 Q Okay.

16 And the total number of
17 detections when you add them up are
18 about 21, nearly 22,000, correct?
19 You've got 6 848 and 15 093

20 A Fifteen plus six, yeah, about
21 22,000, something like that.

22 Q I said about 22,000 or close
23 to 22,000.

24 And you multiplied \$200
25 against every one of these detections?

1 KOHN

2 A Yeah.

3 Q But you don't know if these
4 are unique detections, correct?

5 A Well, it says unique
6 detections. And I understood them to
7 be unique detections. I had previously
8 given a back of the envelope done in my
9 own way, way back in February when I
10 started working on the case and using
11 data that went all the way back to 2013
12 or something like that. And -- like I
13 said. So when I saw these numbers I
14 said it's in the realm of -- again, I
15 did back of the envelope and I just
16 took these as what it was.

17 Q But now they've gone up by
18 some nearly 7,000 from your number?

19 A Apparently.

20 Q And you don't know whether
21 they are or not unique detections?

22 A I'm not the one who generated
23 this. So I don't know whether they're
24 unique in the way that you and I have
25 been talking about my understanding of

1 KOHN

2 what unique is.

3 Q Do you know how many of these
4 detections -- I assume you're going to
5 know the answer -- are Viacom
6 detections, detections of broadcasts on
7 Viacom networks?

8 A I could do that.

9 Q You could pull it out from
10 the list?

11 A Right. Like MTV Classic is
12 MTV2. MTV -- we can probably pull out
13 and add the numbers up.

14 Q So we can add up what the
15 total number of MTV detections are?

16 MR. MARDEROSIAN: Well, he
17 said he did not prepare this.

18 MR. ZAKARIN: I understand.

19 MR. MARDEROSIAN: And I think
20 that's a question for Karen
21 Rodriguez.

22 MR. ZAKARIN: Well, the
23 problem is it's attached to his
24 report.

25 MR. MARDEROSIAN: I think

1 | KOHN

2 Anyway, let's continue on.

3 Q In terms of -- so we could
4 figure out which are Viacom channels
5 and therefore which are Viacom
6 detections, correct?

7 A Yes, if we knew what Viacom's
8 channels are.

9 Q For which you applied \$200
10 for each and every one of the
11 detections, correct?

12 A Well, are you just saying the
13 same thing for each -- yeah, I used the
14 total numbers here and multiplied it by
15 \$200.

16 Q And in terms of these
17 detections, do you know how many are
18 not works that were delivered to Viacom
19 Extreme but are owned by others
20 including the plaintiffs?

21 MR. MARDEROSIAN: Objection.

22 | **Vague.**

23 Q You know that the plaintiffs
24 self-published works, right?

25 | A Yes .

1 KOHN

2 Q Do you know how many of these
3 detections are of the plaintiffs'
4 self-published works?

5 A I think -- I didn't generate
6 this. So I don't have the underlying
7 data that was used to generate this. I
8 wouldn't be able to answer any of those
9 questions.

10 Q You with agree with me though
11 that there's no reason to charge or
12 make a claim against Extreme or Viacom
13 for \$200 per each of the plaintiffs'
14 own works?

15 A No.

17 A Absolutely not.

18 Q So if the plaintiffs' self-published works or works published
19 by third parties are among these detections --
20

22 A Right.

23 Q -- they have --

24 MR. MARDEROSSIAN: Hold on.

Let him finish the question

1 KOHN

2 because I want to object to it
3 before you agree to it.

4 Q -- they have to get backed
5 out?

6 MR. MARDEROSIAN: I'm going
7 to object.

8 It's an incomplete
9 hypothetical, and it doesn't
10 include the fact that there's
11 evidence that Extreme is taking
12 Aron and Robert's own publishing
13 for Lonely Orchard and Brothers
14 Heathen.

15 Q You can answer my question as
16 opposed to the rhetoric there.

17 A My understanding is that
18 these were unique detections of
19 music -- musical work, sound recordings
20 that were created by Aron and Rob and
21 delivered under the contract.

22 Q But in fact you don't know
23 whether these were, in fact, delivered
24 or are self-published?

25 MR. MARDEROSIAN: I'm just

1 KOHN

2 going to object.

3 It's an incomplete
4 hypothetical and vague.

5 | Q You can answer.

6 MR. MARDEROSIAN: And doesn't
7 include the issue over whether or
8 not Extreme is taking the
9 plaintiffs' published --
10 self-published songs.

11 A And I don't know whether this
12 is an underrepresentation and doesn't
13 include all of their songs that were
14 delivered and used.

15 Q So you don't know very much
16 at all about this document?

17 A That's right.

18 Q Essentially, what you did is
19 you took the number of detections
20 without knowing what they are and
21 multiplied each one by 200?

22 A And that wasn't the essential
23 part of my report. The essential part
24 of my report was coming up with the
25 \$200 figure. If this wasn't included,

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KOHN

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it wouldn't have mattered because
whichever the true number is would be
multiplied by \$200. If it was --
instead of 21,000, if it was 16,000, if
it was 30,000, whatever that number is.
And I'm sure enough good minds can get
together and figure out using the
TuneSat data what the proper number is.

10

11

Q We'll come to the 200 in due
course.

12

13

14

15

16

17

18

19

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21

22

23

24

25

In any event, if I understand
you correctly you -- it's your view
that the 200 is the right number for --
for these -- for all of those
detections, that's your opinion?

MR. MARDEROSIAN: Right

number for what?

Q The right number for the sync
fee for each of these 200 detections
that you have opined?

A My report says what it says
about the \$200 number. We can turn to
it. I don't want to say anything
that's inconsistent and be --

1 | KOHN

2 Q Well, let's look at Page 86
3 which is where I think come up with
4 this.

5 A Thank you. Thank you.

6 Q Okay.

7 A That's helpful.

8 Q I think this is where you
9 explain how you came up with your \$200.

10 A I ' m there.

11 Q Okay.

12 And if I -- I want to
13 characterize this correctly, what you
14 did was you looked at the license of
15 their works to CBS for a promo use for
16 \$ [REDACTED], correct?

17 | A Yes .

18 Q And you compared that to an
19 in-program license use of one of their
20 own works, meaning Rob and Aron, for
21 \$300. And you then -- and you
22 reference to up to 20,000 for works
23 they own control. You mentioned that.
24 And then you conclude, I think you just
25 say I therefore applied the sum of 200

1 KOHN

2 to each of these. So your view is, at
3 the very least, for the CBS promo use
4 200 would be the right number?

5 A 200 would be the right number
6 to use across the board for the
7 detections -- unique detections that
8 were discovered during the period from
9 mid-2014 to the present.

10 Q But one of those is you look
11 at CBS promo use and you figure they
12 charge [REDACTED]. I think 200 is the right
13 one?

14 A Well, there might have been
15 an in-program use -- well, I call it an
16 in-program use -- that might have been
17 worth \$20,000 or worth more. But I
18 picked 200 as an overall way of just
19 going across the board to simplify it.

20 Q Could you look at Exhibit A
21 of your report for a second. And we'll
22 come back to that.

23 A Yes.

24 Q Exhibit A, this you have done
25 all by yourself?

1 KOHN

2 the NY9 and got \$200 for the promo for
3 it.

4 Q Is the \$10,000 that you put
5 in there, is that also in your Exhibit
6 B? Is it the same use as Exhibit B?

7 A I don't know.

8 Q So you could have a
9 duplication there?

10 A I might have a duplication.

11 Q You don't know that?

12 A Neither do you. I don't know
13 whether I do.

14 Q Not my burden.

15 Did you -- by the way on your
16 Exhibit B, did you back out what was
17 actually paid on any of those licenses?

18 A I was not asked to do that.

19 Q Okay.

20 So you were just asked to
21 come up with a gross number and put
22 that forward as the damage claim?

23 A I was asked to come up with
24 the \$200 amount. All right. I was
25 given the unique numbers. I did the

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KOHN

2 multiplication. It was towards the end
3 of this. I didn't have the information
4 to back it out. And I wasn't provided
5 to -- but it. But it could be backed
6 out by somebody else.

7 Q Lots of things could be done,
8 but it wasn't done. So this is put
9 forth -- you're aware that you've put
10 this forth as a damage claim, \$200
11 times 20 -- almost 22,000 detections?

12 A Well, I also said to you that
13 I'm not the one who came up with the
14 22,000 detections. All right?

15 Q Is it your testimony --

16 A Somebody -- you know,
17 somebody else came up with that number
18 and I came up with the \$200. I made a
19 multiplication of the two numbers. One
20 number I came up with. Another number
21 somebody else came up with, and that's
22 what I put in here.

23 Q At the bottom of -- here,
24 based on my calculations, Page 86, Aron
25 and Rob share of these broadcast

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KOHN

2

MR. MARDEROSIAN: That's

3

argumentative. Assumes facts not
in evidence and mischaracterizes
the evidence.

4

MR. ZAKARIN: Except that
it's true.

5

A You'll have to --

6

MR. MARDEROSIAN: It's not
true.

7

A Well, the number is either
going to be 16,000 or it's going to be
21,000 or something in between. You
know, there's a correct number.

8

Q How many of them -- of those
16,000 are Viacom, if you know?

9

A I didn't do that filter.

10

Q Because we didn't add up --
and this came from Karen Rodriguez
anyway, right?

11

A Yes.

12

Q So we'll skip that.

13

Q You're aware of the BMI --
excuse me, ASCAP consent decrees,
aren't you?

1 KOHN

2 A Generally. I haven't read
3 them in years.

4 Q Sadly, I have much more
5 familiarity I think.

6 But you're aware generally
7 that they preclude publishers and
8 writers from granting ASCAP and BMI
9 exclusive public performance rights,
10 aren't you?

11 A So what?

12 Q So what? I didn't ask you so
13 what. I asked you whether you're aware
14 of that?

15 A They -- it doesn't preclude
16 the music publishers from granting it.

17 Q It actually requires that
18 music publishers can't grant exclusive
19 rights to ASCAP and BMI. They have to
20 be --

21 A That's right. That's right.
22 They have to reserve the right. It's a
23 non-exclusive basis so they have to
24 reserve the right to issue direct
25 blanket performance licenses. I saw

1 KOHN

2 that in Barry's report.

3 Q You knew it beforehand,
4 didn't you?

5 | A Yes .

6 Q And broadcasters are also
7 fully aware of it, aren't they?

8 A Yes .

9 Q And you're aware, aren't you,
10 that broadcasters -- a number of
11 broadcasters will demand direct
12 performance licenses?

13 A Yes, they will.

14 Q Okay.

15 A When they can get it.

16 Q You can say no, but you can
17 also lose the license if you say no;
18 isn't that right?

19 A That's correct.

20 Q Okay.

21 A Sometimes they need to have
22 the music they need to have and --

23 Q Well, need to have the music
24 they need to have is more frequent with
25 popular music library -- popular music

1 KOHN

2 publishers rather than production music
3 libraries, wouldn't you agree?

4 A I wouldn't necessarily put it
5 that way. But I think the way you've
6 put it is that production music
7 libraries have been more amenable to
8 granting direct public performance
9 licenses than commercial -- what your
10 client called -- other kinds of music
11 publishers, traditional music
12 publishers.

13 Q Traditional music publishers
14 have evergreens and must-haves as
15 opposed to more generic music?

16 A Right. Because -- because
17 production music libraries have this --
18 it's not because the music is any
19 worse.

21 A But they also have the
22 ability to grant the sound recording at
23 the same time, and that gives them
24 their special advantage.

1 KOHN

2 must-have works or evergreen works.
3 They have genres that are used by
4 broadcasters.

5 A Sure .

6 Q And popular music is just --
7 costs much more and you have much more,
8 if you excuse, me F-U power when you
9 have popular music?

10 A Sure.

11 Q I didn't think that it was
12 controversial.

13 A I don't think so either. But
14 you can't -- you can't jump to the
15 conclusion just because the consent
16 decrees say that publishers can issue
17 direct licenses, that a publisher will
18 issue a direct license and then not
19 allocate the money coming back
20 properly.

21 Q But I'm not dealing with
22 allocation. I'm only dealing with,
23 right now --

24 A But the way, one of your
25 experts had used -- I think two of your

1 KOHN

2 experts had quoted a consent decree in
3 connection with their argue. That it
4 was okay not to use a usage basis in
5 their allocation. Yes, they did. And
6 I thought that was -- that was
7 incorrect.

8 Q I don't think that they say
9 that, but they say what they say. So
10 we don't have to debate it between you
11 and I. I think the simple point that
12 we're just trying to make is that the
13 consent decrees make it impossible for
14 ASCAP and BMI at least to have
15 exclusive licensing rights and
16 performance rights. They can't have it
17 exclusively.

18 | A Yes .

19 Q And broadcasters know that
20 and --

21 A We've already been through
22 this, right?

23 Q So we agree.

24 It's not your contention, is
25 it, I just want to make sure, that if a

1 KOHN

2 broadcaster, CNN, I think there are a
3 couple of others, came to Extreme and
4 said we want to license, we want a
5 direct performance license. It's not
6 your contention that Extreme should
7 have rejected that and potentially lost
8 the license, is it?

9 MR. MARDEROSIAN: Objection.

10 Incomplete hypothetical.

11 Calls for speculation.

12 Q Let me rephrase it. Let me
13 rephrase it.

14 A Okay.

15 Q It's not your contention, is
16 it, that if a broadcaster, whether it
17 was CNN or another broadcaster said
18 we're willing to enter into a blanket
19 license with you but only if you grant
20 us also a direct performance right,
21 that Extreme should have simply said
22 no, we won't do it?

23 A If Extreme is not prepared to
24 do the work necessary to comply with
25 its contracts with songwriters to

1 KOHN

2 allocate the income on the blanket
3 basis on a usage basis, then it should
4 reject it.

5 Q Okay. I understand your view
6 on how a blanket should be allocated.
7 So we may disagree, but that's your
8 condition that they can do it but only
9 if they allocate on a usage basis; is
10 that your position?

11 A Yes .

12 Q Okay.

13 And what about on a -- I call
14 it a needle drop. You call it what, a
15 --

16 A I think a needle --

17 Q -- either a source or a
18 direct license?

19 A I was saying that either
20 there's a -- yeah, there's either a
21 blanket agreement or there's discrete
22 agreements. We'll call it --

23 Q I think discrete and source
24 are used, but I think in the industry
25 they primarily call it a needle drop.

1

KOHN

2 Be that as it may, if a
3 broadcaster comes, and it could be CNN,
4 it could be Hearst, it could be
5 anybody, and says I'll license X, Y and
6 Z works from you but you've got to
7 grant me the public performance grant,
8 as well. It's not your contention that
9 they should have, meaning Extreme
10 should have rejected that demand?

11 A Sorry. You're going to have
12 to repeat the question because I didn't
13 follow it.

14 Q I'm talking about a needle
15 drop and discreet license.

16 A Right.

17 Q For individual works.

18 A Right.

19 Q A broadcaster comes and says
20 I want to license X, Y and Z songs for
21 sync usage.

22 A Let's say three -- you said
23 three songs.

24 Q It could be ten songs. It
25 doesn't matter.

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KOHN

2

A Okay.

3

Q I want to license these ten
4 songs, and I want to grant the public
5 performance rights along with that
6 grant. Okay? It's not your
7 contention, is it, that Extreme should
8 have or was obligated to reject the
9 license request?

10

A It has an obligation to each
11 of the songwriters, as we've discussed,
12 to allocate the income if it's done on
13 a blanket basis.

14

Q We're not talking about a
15 blanket. We're talking about a
16 discreet --

17

A So let's talk about one song.
18 Don't say three songs. Say one song.

19

Q Well, each one gets its own
20 value in the license, in other words
21 I'll license it for 300, this one for
22 400, this one -- whatever I get.

23

A Okay.

24

So it's basically -- it's
25 four or five discreet licenses and one

1 KOHN

2 agreement that covers all five sync
3 licenses?

4 Q There are plenty of those.

5 You've seen that, haven't you?

6 A And a public performance
7 license goes along with each of them.

8 Sure, it's done -- theatrical licenses
9 were done in precisely that way.

10 Q But for television that's
11 what a broadcaster demands and the
12 choice is you either do it or -- a
13 broadcaster does it as well and they
14 come to you with your choices, you
15 either grant the license or test
16 whether they'll go someplace else?

17 A Fair enough, yes.

18 Q You're not suggesting that
19 Extreme was obligated to reject any
20 direct license demands by a
21 broadcaster?

22 A well, if you're going to --

23 MR. MARDEROSIAN: I'm just
24 going to object again.

25 It's an incomplete

1 KOHN

2 hypothetical and vague.

3 A I'm not going to get -- so,
4 you know, you'll take my answer and
5 take it out of context. Because we
6 just had a colloquy here among several
7 things.

8 So to state the complete
9 hypothetical, and that is, a
10 broadcaster goes to a copyright owner
11 and wants to have a sync license
12 coupled with a direct public
13 performance license for a particular
14 song and recording with that song,
15 right?

16 Q Comes to the production music
17 library, yes.

18 A Right. And let's say there's
19 one or two songwriters who on the back
20 end will be allocated their, let's say
21 it's 50 percent of the license fee.

22 O Um-hum.

23 A I don't see any issue on the
24 allocation side. We know what the
25 usage is. It's going to be -- the

1 KOHN

2 contract is going to say you're allowed
3 to use it in one episode or ten
4 episodes, or you can use it in as many
5 episodes as you want during the year,
6 you could do whatever basis it is.

7 Q It's not a blanket. It's not
8 a blanket.

9 A Right. It's a *discreet*
10 license.

11 Q I agree.

12 A Of course they have -- the
13 copyright owner has the right to do
14 that.

15 Q Okay. I just wanted to make
16 sure.

17 Turn again, if you would --
18 first of all, turn to Page 14 of your
19 opinion again, if you would.

20 This is the second to last
21 bullet point on 14. We're referring
22 really to your Exhibit A again, okay?
23 And it says with respect to a fair and
24 reasonable market value for the body of
25 the sync licenses as negotiated by

1 KOHN

2 speaking it will go slower.

7 Q Okay. That's fine. Middle
8 paragraph of Page 44. As Mr. Emanuel
9 testified, the AETN prefix was used as
10 a means to split Extreme's publisher
11 share of that income with the A&E
12 network. This has no benefit to the
13 songwriters. Indeed, it has the
14 potential to harm it. The potential
15 confusion could cause performance
16 royalties to be misdirected as
17 additional registrations for the same
18 songs could spawn unanticipated errors.

19 Let's work through that
20 statement, Mr. Kohn. You're aware,
21 aren't you, that A&E has a blanket
22 license with BMI?

23 A Yes, we saw that earlier, I
24 think.

25 Q When I showed you TNN but

1 | KOHN

2 within that Exhibit I believe is A&E as
3 well?

4 A Right.

5 Q And that was at Allison
6 Smith's deposition, right?

7 A Yes.

8 Q Okay.

9 And you understand, don't
10 you, that under that blanket license
11 the licensees pays a share of its
12 revenues to the PROs regardless of how
13 much or how little it uses works?

14 MR. MARDEROSIAN: Objection.

15 Incomplete hypothetical.

16 | Vague and ambiguous.

17 Q You could answer.

18 A That AETN, as the licen
19 BMI, right -- is that what you're
20 talking about?

21 Q It's actually A&E is the
22 licensee of BMI.

23 A Okay. That's right.

25 A Yes.

1 | KOHN

2 Q And it's based on a
3 percentage of its revenue, not based
4 upon its usage of works?

5 A That's correct.

6 Q Now, if the licensee also
7 receives back some performance income
8 for the works that it uses, that
9 reduces the effective cost of its
10 blanket license, doesn't it?

11 A If the licensee --

16 A So repeat the question.

18 If the licensee -- we'll deal
19 with A&E.

A That's the broadcasting --

21 Q A&E is the blanket license.
22 If it gets paid back some performance
23 income for the works that it uses,
24 because it has a share of the
25 publisher's share of performance

1 KOHN

2 income, that reduces the effective cost
3 of its blanket license, doesn't it?

4 MR. MARDEROSIAN: That calls
5 for speculation and incomplete
6 hypothetical.

7 A It doesn't reduce the cost of
8 its blanket license. It reduces the
9 cost of its music because it's now
10 getting income.

11 Q It's getting income that it
12 can offset against the fees that it has
13 to pay to BMI?

17 A It can use to offset it,
18 yeah; but it doesn't reduce the cost of
19 the blanket license.

20 Q Right. The blanket
21 license -- if it gets -- if it gets --
22 if it pays \$10 on its blanket license
23 and gets \$5 back as its publisher share
24 of performance income, effectively the
25 ad cost of its blanket is \$5?

1 KOHN

2 MR. MARDEROSIAN: Calls for
3 speculation. Incomplete
4 hypothetical.

5 A It's going to find a new
6 source of income. And if you wish to
7 say that it offsets, it gets a new
8 source of income from music, then you
9 wish to say that it offsets its cost of
10 music, sure. It offsets its cost of
11 electricity.

12 Q Okay.

13 A Fine.

14 Q And you'd agree, wouldn't
15 you, logically that A&E has an
16 incentive to use the works in its
17 programs that generate income for it?

18 MR. MARDEROSIAN: Calls for
19 speculation. Incomplete
20 hypothetical.

21 Q You could answer the
22 question.

23 A The A&E network is not in
24 business of being a music license.
25 It's not in the business of generating

1 KOHN

2 money from music. Somebody found a
3 means by which it could reduce its
4 music costs. Right?

6 A Somebody found a means of
7 reducing its music costs by doing a
8 deal using its leverage, right? And
9 says, okay, if you give me half of your
10 publisher's share I'll go ahead and get
11 that license and use some of your stuff
12 as opposed to -- some of your music and
13 somebody else's music.

14 Q Correct.

15 A That's the way to put it.

16 It's just simply a logical --

17 Q I agree. It has incentive
18 because it's going to make some money
19 as opposed to just spending money.

20 It's incentivized to use the
21 works on which it makes money, right?

22 A There's --

23 MR. MARDEROSIAN: Objection.

24 Calls for speculation.

25 Incomplete hypothetical.

1 KOHN

2 A If all things being equal,
3 but a lot of music use, as you know, is
4 based upon creative decisions that
5 people make. The A&E network can try
6 to let its producers know that this
7 music will help A&E, but the producer
8 might say screw that, I'd rather use
9 somebody else's music because of
10 creative reasons. So you -- you can't
11 just simply --

12 Q I didn't say that it's a
13 guarantee that it will use it. I said
14 it's incentivized to use music on which
15 it will make money, right?

16 MR. MARDEROSIAN: Calls for
17 speculation.

18 Incomplete hypothetical.

19 A All right. So go ahead.

20 Q So -- and Extreme was giving
21 up part of its publisher's share of
22 performance income in order to
23 hopefully get A&E to use those works;
24 isn't that right?

25 | MR. MARDEROSIAN: Calls for

1 KOHN

2 speculation. Incomplete
3 hypothetical.

Creates a further motive.

5 Q There's a question
6 outstanding.

7 You agree with me, don't you?

8 A I don't disagree with you.

9 Q I didn't think so.

10 So, in any event, that is a
11 potential benefit to the writers, isn't
12 it, that their works get used because
13 Extreme is, in effect, subsidizing or
14 hopefully in effect sharing by sharing
15 its performance income to subsidize the
16 possible use of their works?

17 MR. MARDEROSIAN: I'm going
18 to object.

19 It assumes a fact not in
20 evidence if they were actually
21 being paid for those uses. And
22 secondly it's an complete
23 hypothetical.

24 A Okay.

25 I -- but I can see that now.

1 KOHN

2 I mean, what I was trying to do is
3 contrast what the CEO is saying with
4 his own COO. Because the COO
5 originally explained that the AETN
6 reference is actually an additional
7 means of linking the songs to the
8 authors for purpose of paying public
9 performance income.

10 Now, I may have read that as
11 saying paying performance -- for public
12 performance income to the songwriters,
13 which I thought was simply nonsense.
14 And then I saw the CEO disagree with
15 that. Because he was explaining it as
16 a means to split Extreme's publisher
17 share with somebody else and attract to
18 account -- to account and track the use
19 of it.

20 Q But you see now what we just
21 walked through. There is, in fact, a
22 benefit to the writers?

23 A Yes

24 MR. MARDEROSIAN: Hold on,
25 please.

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1
2 STATE OF _____)
3) :ss
4 COUNTY OF _____)
5
6

7 I, ROBERT H. KOHN, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.

14

15

16 ROBERT H. KOHN

17

18

19

20 Sworn and subscribed to before me,
21 this _____ day of _____, 2018.

22

23

24 Notary Public

C E R T I F I C A T I O N

STATE OF NEW YORK

) ss. :

COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter
Notary Public within and for the State
of New York, do hereby certify:

That ROBERT H. KOHN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that this transcript of such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of November,
2018.

Judith Castore

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